No. 99466-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

(Court of Appeals No. 80456-1-I)

TEN BRIDGES LLC,
an Oregon limited liability company,

Petitioner,

v.

YUKIKO ASANO and MADRONA LISA, LLC, a Washington limited liability company, et al.,

Respondents.

PETITION FOR REVIEW

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I. INTRODUCTION

Ten Bridges LLC works nationally to locate surplus proceeds from foreclosure sales and to identify those individuals who have a right to assert a claim to these funds or redeem the realty that was sold, many of whom — for various reasons — lack the awareness, desire, or financial wherewithal to pursue the money for themselves or exercise their right of redemption to buy back the foreclosed property. The Attorney General of Washington filed an amicus brief in this case that suggests Ten Bridges has violated RCW 63.29.350, which prohibits the charging of an excessive finder's fee to locate abandoned property. This statute provides the charging of an excessive finder's fee is a violation of the consumer protection act and a criminal offense. The Northwest Justice Project ("**NJP**") and Northwest Consumer Law Center ("**NCLC**") also filed amicus briefs in this case, and these groups have accused Ten Bridges of "equity skimming" and otherwise illegally taking advantage of homeowners in distress. In making these arguments, the amici essentially argue RCW 63.29.350 should be weaponized and used against companies like Ten Bridges to put a halt to their operations in cases like this where the legislature never intended the statute to be applied. Ten Bridges submits the attorney general is mistaken, and that RCW 63.29.350 does not apply in this case for three different reasons. As for the consumer groups' complaints, they are misplaced for a

variety of reasons, as they do not give effect to the plain meaning of the statute at issue and these organizations do not appreciate the substantial risk and expense that Ten Bridges must take on when it comes to locating, evaluating, and purchasing the rights of individuals like Respondents Yukiko Asano and Teresia Guandai. [1]

The consumer groups also fail to grasp the world of difference between obtaining surplus proceeds from a tax foreclosure sale and the pursuit of surplus proceeds in a case like this. All surplus proceeds from tax foreclosure sales are specifically earmarked for the property owner of record. These funds cannot be garnished or otherwise reached by creditors and belong to the taxpayer of record. All the taxpayer needs to do to get the funds is submit a simple form to the county treasurer. In contrast, the party that is entitled to surplus proceeds from foreclosure sales of the kind held in this case cannot be determined unless and until that party has filed a motion to disburse funds in superior court, given notice of its motion to all parties in interest, and a court — as opposed to a county clerk or a clerk at the Department of Revenue — has determined exactly who is entitled to the funds based on the respective interests in the property that were foreclosed.

[1] The substantial risk and expense that Ten Bridges takes on in conducting its business is discussed in Ten Bridges's answers to the consumer groups' amicus briefs.

In *Asano*, Ten Bridges never filed any such motion. All Ten Bridges really did in that case was to tender some $376,000 of its own money to the sheriff in an attempt to redeem Ms. Asano's former home from Madrona Lisa, LLC. The trial court erred in holding Ten Bridges has no right of redemption under either one of the deeds that Ms. Asano executed in its favor.

Further, Ten Bridges did not charge Ms. Asano or Ms. Guandai an excessive finder's fee to locate the surplus proceeds from the sale of their homes in contravention of RCW 63.29.350. Ten Bridges has literally received no money whatsoever from these individuals. It even disclosed to these individuals up front the location and existence of the surplus proceeds from the sale of their homes — *free of charge*. At that time, these individuals could have done then what many other homeowners have done and pursued these funds at their own expense, at their own risk, and without the involvement of Ten Bridges. Instead, they opted to sell their rights to Ten Bridges.

The legislative history and related materials of interest support Ten Bridges's interpretation of the statute. House Bill Report 2428 of the amendments to RCW 63.29.350 notes under the "Title" section toward the top of the first page that the recent amendments to RCW 63.29.350 are "[a]n act relating to fees for locating surplus funds from county governments, real

estate property taxes, assessments, and other *government* lien foreclosures or charges." [2] (Emphasis added). The Summary of Bill set forth on page 3 of HB 2428 states "The act eliminates the blanket exemption from the [Uniform Unclaimed Property Act] regulations as they apply to excess, unclaimed proceeds from property tax foreclosures, assessments, *and liens held by counties, cities, and other municipalities*." (Emphasis supplied). It also appears former Attorney General of Washington Rob McKenna agreed that RCW 63.29.350 concerns surplus proceeds from governmental foreclosures as opposed to surplus proceeds of the kind generated in this case. As seen from Mr. McKenna's office's AG Request Legislation – 2010 Session concerning HB 2428, the 2010 amendments to RCW 63.29.350 stemmed from the problem of "Families who have lost their homes in tax foreclosures are vulnerable to individuals seeking to take the remaining sale proceeds" and in such sales, "Any money left over rightfully belongs to the original owner." https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/Office_Initiatives/Legislative_Agenda/2010/Found_Money_Cap.pdf (last visited February 1, 2021). Mr. McKenna's office noted there are firms that seek to take

[2] House Bill Report HB 2428 is available online at http://lawfilesext.leg.wa.gov/biennium/2009-10/Pdf/Bill%20Reports/House/2428%20HBR%20PL%2010.pdf (last visited February 1, 2021).

advantage of people in these situations with a "typical scenario" occurring "when a county sells vacant land due to non-payment of taxes" and that the attorney general "proposes amending RCW 63.29.350 to cap any 'finder's fee' from such property tax surplus transactions." The legislative history to the amendments to RCW 63.29.350 shows the legislature never intended the statute to apply in cases like this.

If the Court of Appeals's opinion is upheld, the determination that RCW 63.29.350 applies in judicial foreclosure lawsuits like this will have widespread and unintended negative consequences throughout Washington. Given the prevalence of foreclosures in this state, and the importance of the issues presented in this case, the court's error raises issues of substantial public interest, and it warrants review and correction by this Court.

II. IDENTITY OF PETITIONER

The Petitioner is Appellant Ten Bridges LLC ("**Ten Bridges**").

III. CITATION TO COURT OF APPEALS DECISION

On October 26, 2020, the Washington Court of Appeals issued a published opinion affirming the trial court's denial of Ten Bridges's motions to set the redemption price in the *Asano* case and affirming the order disbursing surplus proceeds in the linked *Guandai* case. The Court of Appeals denied Ten Bridges's motions for reconsideration on December 31, 2020.

IV. ISSUES PRESENTED FOR REVIEW

Whether the reach of the statute that makes it a violation of the consumer protection act and a crime to charge an excessive finder's fee for locating abandoned property can be discerned from the conduct of parties to a contract as opposed to the actual text of the statute.

Whether a deed to real property that contains all of the statutory requirements for a conveyance and specifically states it is a standalone agreement is illegal and void because a prior deed between the parties was held to be illegal and void.

V. STATEMENT OF THE CASE

The *Guandai* and *Asano* appeals are linked cases that came before the Court of Appeals by way of two foreclosure actions that stem from unpaid condominium assessments. Both actions resulted in surplus proceeds that were deposited into the superior court registry. These cases came before the Court of Appeals on Ten Bridges's appeal of the ruling on its motion to disburse surplus proceeds in the *Guandai* case and its appeal of the rulings on two motions to set the redemption price filed in the *Asano* case. In both cases, the trial court summarily determined the Guandai and Asano quitclaim deeds are void and unenforceable because they violate RCW 63.29.350. RCW 63.29.350 is entitled Penalty for excessive fee for locating abandoned property – Consumer protection act ("**CPA**")

application, and is part of the Uniform Unclaimed Property Act that Washington has adopted along with most other states. This statute makes it a CPA violation and a crime to charge an excessive fee for locating abandoned property. RCW 63.29.350 provides as follows:

> (1) It is unlawful for any person to seek or receive from any person or contract with any person for any fee or compensation for locating or purporting to locate any property which he or she knows has been reported or paid or delivered to the department of revenue pursuant to this chapter, or funds held by a county that are proceeds from a foreclosure for delinquent property taxes, assessments, or other liens … *Any person violating this section is guilty of a misdemeanor and shall be fined not less than the amount of the fee or charge he or she has sought or received or contracted for, and not more than ten times such amount, or imprisoned for not more than thirty days, or both.*
>
> (2) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. *Any violation of this section is not reasonable in relation to the development and preservation of business. It is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.* Remedies provided by chapter RCW are cumulative and not exclusive.

RCW 63.29.350(1) (emphasis added).

Ten Bridges has argued RCW 63.29.350 is inapplicable here for three reasons, one being that Ten Bridges never charged Ms. Guandai or Ms. Asano a fee "for locating or purporting to locate any property," as it has literally never received any money at all from these individuals. Ten Bridges disclosed the location and existence of the surplus proceeds in the

quit claim deeds up front and free of charge. Ten Bridges has noted Ms. Guandai and Ms. Asano were free to read of and learn about the nature and existence of the surplus proceeds in the deeds and then decline to execute them in order to pursue the surplus proceeds on their own and at their own expense. Nevertheless, the trial court essentially entered summary judgment against Ten Bridges based on this statute even though no such motion was ever filed. On appeal, the NJP, NCLC, and Attorney General of the State of Washington filed amicus briefs in opposition to Ten Bridges's position. In their motion for leave to file an amicus brief, the NJP and NCLC stated their intent to address "the elements of equity-stripping schemes such as the one perpetrated by Ten Bridges … and the impact of such schemes on communities of color." In his motion for leave to file an amicus brief, Attorney General Robert Ferguson noted his "strong interest in protecting distressed Washington consumers experiencing the foreclosure of a home or other residential real property from equity skimming schemes." The attorney general also noted "[t]o that end, the Attorney General requested the now-enacted 2010 amendments to RCW 63.29.350, which impose a cap on fees associated with the recovery of surplus proceeds due to a homeowner after foreclosure." But the attorney general failed to mention that the previous attorney general's request for a

change to the statute stemmed from a concern over proceeds from property tax foreclosures as opposed to surplus proceeds from the kind of foreclosure that occurred in this case.

The opinion the Court of Appeals issued in this case held the quitclaim deeds Ms. Guandai and Ms. Asano provided to Ten Bridges violated RCW 63.29.350 and were therefore unlawful and unenforceable. The opinion determined "[t]he statute's plain language does not support Ten Bridges" and its view that the phrase "other liens" in the statute refers only to liens held by governmental entities. [3] The opinion further determined the statutory language "funds held by a county" includes funds held by a county clerk under the purview of a court. [4] The opinion also concluded RCW 63.29.350 applies in cases like that and that the statute is not limited to cases involving the foreclosure of governmental as opposed to non-governmental liens despite the fact that all of the legislative history Ten Bridges has cited to regarding the 2010 statutory amendments shows the amendments went into effect based solely on a concern about homeowners losing their equity in property tax foreclosures as opposed to cases like this.

The opinion also concluded Ten Bridges's contention it did not locate funds for Ms. Asano or Ms. Guandai for a fee or compensation

[3] Opinion at 10.
[4] Opinion at 12-13.

because it discovered the funds' positions before contracting with them and even disclosed the positions for free fails because "this argument relies on a narrow, superficial interpretation of the statute." [5] The opinion then applied the substance over form test from case law to hold that even if "Ten Bridges disclosed the funds' locations for free, the statute still applies if Ten Bridges used its knowledge from having located the funds as part of a scheme to compensate itself with more than five percent of the value of the funds." [6]

The opinion also held the second quitclaim deed from Ms. Asano, which does not contain any reference to or provision for the division of surplus proceeds, violated RCW 63.29.350 because the first Asano quitclaim deed violated the statute and the parties intended that the second deed change nothing from the first. [7] In doing so, the opinion noted the second deed recites it was in consideration of zero dollars and that when it proposed the second deed, Ten Bridges told Ms. Asano it would have no effect on the parties' existing agreement. [8]

The only time that the Court of Appeals had previously addressed RCW 63.29.350 was in *Nelson v. McGoldrick*, 73 Wn. App. 763, 871 P.2d

[5] Opinion at 13.
[6] Opinion at 15.
[7] Opinion at 17.
[8] Opinion at 17.

177 (1994). Review was granted in *Nelson*, and RCW 63.29.350 has not come before the supreme court since then. *Nelson v. McGoldrick*, 127 Wn.2d 124, 896 P.2d 1258 (1995). *Nelson* predated the statutory amendments to RCW 63.29.350 that went into effect in 2010 and 2012.

Ten Bridges filed its motion for reconsideration of the opinion in this case on November 16, 2020, and this motion was denied by way of an order entered on December 31, 2020.

VI. ARGUMENT

A. The decision of the Court of Appeals conflicts with the decisions of this Court and the Court of Appeals.

The decision of the Court of Appeals conflicts with the Washington Supreme Court's decisions in *Nelson v. McGoldrick*, 127 Wn.2d 124, 896 P.2d 1258 (1995) and *Int'l Tracers of Am. v. Hard*, 89 Wn.2d 140, 570 P.2d 131 (1977). While Ten Bridges has argued *Nelson* and *Hard* support its position, the opinion states "neither case is apt because both interpret an earlier version of RCW 63.29.350 that did not include the language at-issue here." [9] Ten Bridges disagrees and maintains these cases are apt for the following reasons.

The version of RCW 63.29.350 that was in effect at the time of *Nelson* made it "unlawful for any person to seek or receive from any person

[9] Opinion at 14, footnote 34.

or contract with any person for any fee or compensation for locating or purporting to locate any property … in excess of five percent of the value thereof returned to the owner." *Nelson*, 127 Wn.2d at 138, 896 P.2d 1265. The contract at issue in *Nelson* was an heir hunter's contract that provided for a contingency fee in the amount of 50% of the value of the property, which is the same percentage of recovery that Ten Bridges and Ms. Asano agreed to if Ten Bridges was able to obtain all of the surplus proceeds. The heir hunter did not disclose the location of the property before the contract was signed. *Id.* The supreme court held the statute did not apply because the property at issue was held by Panorama as opposed to the government, and the court declined to declare the contract to be void or illegal as a matter of law. *Id.* Unlike the Court of Appeals in this case, the Washington Supreme Court did not apply the substance over form rule to interpret the statute and determine whether the statute applied to the parties' contract. *Id.*

The issue in *Hard* was whether a property locator's contingent fee contract violated RCW 63.28.330 (the precursor to RCW 63.29.350), which contract stemmed from shares of stock being held by the state as a result of escheat proceedings. That contract provided the locator with a 40% contingent fee, and although the locator knew of the existence and location of the abandoned shares that belonged to the late owner's estate, it did not

disclose that information to the estate's heirs at the time the contract was entered into. *Id.* at 142, 570 P.2d 131. At the time of *Hard*, RCW 63.28.330 made it "unlawful for any person to seek or receive from any person or contract with any person for any fee or compensation for locating or purporting to locate any property … in excess of five percent of the value thereof returned to such owner." *Hard,* 89 Wn.2d at 1433, fn. 1, 570 P.2d 131. The trial court limited the locator's recovery to 5% of the ultimate distribution, and the supreme court affirmed this ruling. Unlike the Court of Appeals in this case, the Washington Supreme Court did not apply the substance over form rule to interpret the statute and determine whether the statute applied to the parties' contract.

The current version of RCW 63.29.350 provides "[i]t is unlawful for any person to seek or receive from any person or contract with any person for any fee or compensation for locating or purporting to locate any property … in excess of five percent of the value thereof returned to such owner." [10] This part of the statute that describes the reach of the law, namely the specific kind of behavior the statute prohibits, is identical to the corresponding parts of the statute that were in effect when *Nelson* and *Hard* were decided. While the current version of the statute has been amended

[10] Opinion at 9; RCW 63.29.350.

since those cases were decided to apply to a wider range of abandoned property, the language above has not changed one bit. As such, Ten Bridges disagrees with the statement in the opinion that "[n]either case is apt because both interpret an earlier version of RCW 63.29.350 that did not include the language at-issue here." The reality is the opinion conflicts with *Nelson* and *Hard*.

The opinion also states the statute applies to the Guandai and Asano transactions because "Ten Bridges relied upon having located the surplus funds for a fee of almost 50 percent of the funds as compensation for obtaining the other 50 percent for Asano." [11] But this assertion misses the point. Ten Bridges never received a fee to locate or purportedly locate property, as it disclosed the existence and location of the surplus proceeds to Ms. Guandai and Ms. Asano up front and free of charge in the quitclaim deeds. Ten Bridges only stood to earn a fee in the *Asano* case if it actually procured or obtained (as opposed to simply located) more than fifty percent of the surplus proceeds. RCW 63.29.350 does not prohibit this arrangement. And in *Nelson*, the Washington Supreme Court refused to declare the property locator's 50% contingent fee to be illegal under RCW 63.29.350 or otherwise.

[11] Opinion at 16.

The opinion also states "[t]he statute's purpose would be undermined if Ten Bridges could evade regulation by tying the service of locating the funds with obtaining the funds or by locating the funds before seeking compensation for having done so." [12] But this sort of reasoning *also* misses the point because the statute's purpose is defined by its *text*, and the text of the statute does not prevent Ten Bridges from taking an assignment of Ms. Guandai's rights up front in exchange for a guaranteed payment of $15,000. Nor does the statute prevent Ten Bridges from taking an assignment of Ms. Asano's rights after it has made her aware of the location and existence of the surplus proceeds free of charge. The fact that Ten Bridges and Ms. Asano agreed to divide any procured or recovered surplus proceeds above a specific amount between them and their agreement that Ten Bridges might potentially in the end wind up with some 50% of the recovered funds is not prohibited by this statute. *See Nelson*, 127 Wn.2d 124, 896 P.2d 1258.

The opinion is in conflict not only with *Nelson* and *Hard* but also with other decisions of the Court of Appeals and Washington Supreme Court concerning statutory interpretation that Ten Bridges cited in its appellate briefs. The Court of Appeals erred by applying the form over

[12] Opinion at 16.

substance test to interpret the meaning of "locating or purporting to locate any property" in RCW 63.29.350 based on the parties' contracts instead of looking to the text of the statute itself, and in doing so, the court subverted the will of the legislature and violated the separation of powers doctrine. The opinion sets a dangerous precedent by not giving effect to the plain and ordinary meaning of the statute's restriction against charging an excessive fee "for locating or purporting to locate any property" given that the statute makes it both a CPA violation and a criminal offense to violate this law.

The decision of the Court of Appeals is also in conflict with other decisions of the Court of Appeals and the Washington Supreme Court that concern illegality and the doctrine of severability. In holding that the second quitclaim deed that Ms. Asano delivered to Ten Bridges was illegal and void, the opinion notes the second deed states it was "in consideration of $0 (Zero Dollars plus other valuable consideration)". However, the statute that delineates the requisites for a deed does not require a deed to recite consideration. RCW 64.04.020. The fact is the second Asano deed satisfies these statutory requirements. Moreover, the Court of Appeals has held a quitclaim deed need not recite consideration in order to transfer title. *Bale v. Anderson*, 173 Wn. App. 435, 294 P.3d (2013).

Nevertheless, the opinion concluded the second quitclaim deed from Ms. Asano violated RCW 63.29.350 because the first quitclaim deed

violated the statute and the parties intended that the second deed change nothing from the first. [13] But the record shows Ten Bridges told Ms. Asano the purpose of the second deed was for Ten Bridges to redeem the home from Madrona Lisa, LLC. Ten Bridges specifically told Ms. Asano in writing on July 19, 2019 that the second deed was designed to "assist us in our efforts to remove this third party's interest in the property." Ten Bridges also told Ms. Asano in writing on August 10, 2019 that "[w]e had our first court hearing against the party that purchased your property" and "[i]f you recall, our goal is to remove their interest in the property." Ten Bridges also explained to Ms. Asano on August 13, 2019 that "[w]e deposited $375,556.41 in redemption funds with the court in order to achieve this."

In addition, the second deed states it is "a standalone agreement, which is separate from and independent of any existing agreements or previously recorded deeds." And Ms. Asano testified in a declaration that "I have no interest in redeeming the Property from Madrona Lisa, LLC, the company that purchased the property at the Sheriff's Sale."

The opinion states the doctrine of severability does not apply where the transaction is illegal. [14] But there is nothing in the law that prevents Ten Bridges and Ms. Asano from having two different agreements. The opinion

[13] Opinion at 17.
[14] Opinion at 18, fn. 46.

erred by concluding the parties' second agreement is illegal just because it held the parties' first contract was illegal. And the agreement Ten Bridges and Ms. Asano reached whereby their second agreement would not change their first agreement does not render their second agreement illegal.

The Court of Appeals noted in *Brougham v. Swarva*, 34 Wn. App. 68, 661 P.2d 138 (1983) that the "doctrine of severability" is a limited exception to the rule that courts will not enforce an illegal contract. *Id.* at 80, 661 P.2d at 145. That doctrine states: If the promise sued upon is related to an illegal transaction, but is not illegal in and of itself, recovery should not be denied, notwithstanding the related illegal transaction, if the aid of the illegal transaction is not required, or if the promise sued upon is remote from or collateral to the illegal transaction, or is supported by independent consideration. *Id.* Thus, so long as a party can show a right of recovery without relying on the illegal contract and without having the court sanction the same it may recover in any appropriate action. *Id.* (internal citations omitted).

Ten Bridges based its second motion to set the redemption price entirely on the second deed. The second deed is not illegal because this instrument does not provide Ten Bridges with a fee in excess of five percent of the value of the property located. Further, even if the first deed is in fact illegal, Ten Bridges should nevertheless be allowed to redeem under the

second deed based on the doctrine of severability. That is because the second deed "is not illegal in and of itself," Ten Bridges has not relied upon "the aid of the illegal transaction" to redeem under the second deed, and the promise sued upon is if nothing else remote from or collateral to the illegal transaction, or is supported by independent consideration. [15] Thus, the opinion is also in conflict with cases like *Brougham* and *Melton v. United Retail Merchants*, 24 Wn.2d 145, 162, 163 P.2d 619 (1945), which cases recognize and uphold the doctrine of severability.

B. The questions presented are important, and this case is an appropriate vehicle for considering them.

The involvement of the Attorney General of Washington, the NJP, and the NCLC reflect the importance of this case, and Ten Bridges has articulated three (3) different reasons as to why RCW 63.29.350 does not apply to cases like this. If the opinion is upheld, the determination that this statute applies in judicial foreclosure lawsuits like this will have widespread and unintended negative consequences throughout Washington. Given the prevalence of foreclosures in this state, and the importance of the issues presented in this case, which importance Ten Bridges, the consumer groups, and the attorney general seem to agree on, the court's error raises issues of

[15] Because these grounds are set forth in the disjunctive as opposed to the conjunctive, Ten Bridges needs to prevail on just one (1) of these bases to redeem under the second deed.

substantial public interest, and it warrants review and correction by this Court.

This case is also important because applying the substance over form test to interpret the reach of RCW 63.29.350 as opposed to giving effect to the plain and ordinary meaning of the entire statute amounts to a violation of the separation of powers, thereby subverting the will of the legislature. Allowing the opinion to stand would set a dangerous precedent because it could lay the groundwork for CPA claims and criminal charges to be brought based on RCW 63.29.350 even when no actual fee of any kind was ever actually charged or received. The legislature never intended to create such a scenario, and the result reached by the Court of Appeals in this case warrants this Court's review and correction.

VII. CONCLUSION

Based on the foregoing, the petition for review should be granted.

RESPECTFULLY SUBMITTED this 1st day of February, 2021.

EISENHOWER CARLSON PLLC

By: *Alexander S. Kleinberg*
Alexander S. Kleinberg, WSBA # 34449
Attorneys for Petitioner Ten Bridges LLC

CERTIFICATE OF SERVICE

On the 1st day of February, 2021, I sent out for service upon the below-listed parties at the addresses and in the manner described below a true and correct copy of the foregoing document, to be delivered to said parties as follows:

Guy Beckett gbeckett@beckettlaw.com	☐	U.S. Mail, postage prepaid
	☐	Via Messenger Service
	☐	FedEx Overnight
	☑	Electronically via E-Service
Patricia Army patriciaa@parmylawoffices.com	☐	U.S. Mail, postage prepaid
	☐	Via Messenger Service
	☐	FedEx Overnight
	☑	Electronically via E-Service
Chelsea Hicks chelseah@nwjustice.org **Thomas McKay** tomm@nwjustice.org **Amanda Martin** amanda@nwclc.org	☐	U.S. Mail, postage prepaid
	☐	Via Messenger Service
	☐	FedEx Overnight
	☑	Electronically via E-Service
Heidi C. Anderson heidi.anderson@atg.wa.gov	☐	U.S. Mail, postage prepaid
	☐	Via Messenger Service
	☐	FedEx Overnight
	☑	Electronically via E-Service

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 1st of February, 2021, at Tacoma, Washington.

/s/ Jennifer Fernando
Jennifer Fernando, Legal Assistant

APPENDIX A

FILED
10/26/2020
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

TEN BRIDGES, LLC, Appellant/Cross Respondent, v. TERESIA GUANDAI, Respondent/Cross Appellant, MIDAS MULLIGAN, LLC, Respondent.	)	No. 80084-1-I
TEN BRIDGES LLC; CARLYLE CONDOMINIUM OWNERS ASSOCIATION, Appellants, v. YUKIKO ASANO, Respondent.	)	No. 80456-1-I PUBLISHED OPINION

VERELLEN, J. — To protect consumers, RCW 63.29.350 caps the fees a fund-finder can claim as compensation for locating surplus proceeds deposited with a superior court clerk following foreclosure of a lien on a property. Ten Bridges, LLC argues the quitclaim deeds it convinced Yukiko Asano and Teresia

Guandai to sign were ordinary real estate transactions and not an equity-stripping scheme violating the statutory cap on excessive fees. But the form of a transaction cannot be used to evade a statute. Because the substance of the quitclaim deeds reveals Ten Bridges sought more than five percent of the surplus proceeds for itself as compensation for having located the surplus proceeds for their rightful owners, the quitclaim deeds violated RCW 63.29.350 and were void.

Regarding Guandai's cross appeal, the court did not abuse its discretion by returning the parties to their respective positions prior to signing the void quitclaim deed.

Therefore, we affirm.

FACTS

Appellant Ten Bridges describes itself as a national business that works to locate surplus proceeds from foreclosure sales and to identify the individuals who have a right to assert a claim to them but have not done so due to a lack of awareness, desire, or ability to pursue the funds for themselves. Ten Bridges culls thousands of foreclosure and public auction records to locate the proceeds and the person with a right to claim them before acquiring the right to claim the funds. Amici, including the Northwest Justice Project and Northwest Consumer Law Center, assert Ten Bridges is running a predatory equity-stripping scheme that causes both immediate and lasting harms to its customers because "post-foreclosure equity-stripping schemes prevent homeowners from stabilizing their lives following foreclosure, rebuilding wealth, and transmitting wealth to their

children and grandchildren."[1] As part of the foreclosure of liens against their condominiums, the King County Sheriff sold Yukiko Asano and Teresia Guandai's condominiums at auction to Madrona Lisa, LLC and Midas Mulligan, LLC, respectively. Asano and Guandai then sold Ten Bridges their rights to claim surplus proceeds. Both sales to Ten Bridges were voided for violating RCW 63.29.350.

Yukiko Asano

In March 2019, Asano's condominium was sold at public auction to Madrona Lisa after the court foreclosed on a lien held by Asano's condominium owners association for just over $14,000 of unpaid assessments. The sheriff returned $346,902.95 in surplus proceeds to the King County Superior Court clerk's office after paying off the lien and other expenses. A few weeks later, Matt Cox of Ten Bridges e-mailed Asano, a resident of Tokyo, to convince her to quitclaim her remaining interest in the condominium, including the right to the surplus funds and the right to redeem, in exchange for $172,000 it would obtain from the surplus funds and transfer to her. Asano was surprised because she had not known about the foreclosure, sale, or surplus funds. Asano signed a quitclaim deed in May.

In July, Ten Bridges tendered a check for $375,556.41 to the sheriff to redeem the condominium, despite knowing the declared redemption price was

[1] Nw. Just. Project Amicus Br. at 13. The Office of the Attorney General also filed an amicus brief in support of respondents.

$413,361.61. The sheriff refused the tender. Ten Bridges filed a motion to set the redemption price at $375,556.41 and relied upon the quitclaim deed as proof of its right to redeem. Madrona Lisa opposed the motion, arguing Ten Bridges had no right to redeem the property because the quitclaim deed violated RCW 63.29.350. On August 8, the court concluded Ten Bridges had no right to redeem the property because the quitclaim deed was void for violating RCW 63.29.350.

On August 10, Cox asked Asano to sign a second quitclaim deed, explaining "the additional form I sent you may save us time" and would have "no effect whatsoever on our existing agreement."[2] Cox did not tell her the court had voided the first quitclaim deed. Asano signed the second deed. After learning the first quitclaim deed had been declared illegal and void, she hired Madrona Lisa's attorney to represent her in opposing Ten Bridges' efforts.

In October, Ten Bridges filed another motion to set the redemption price of the property, this time at $375,506.03, and relied upon the second quitclaim deed as proof of its right to redeem. Madrona Lisa opposed the motion, noted the redemption price had increased to $430,937.91 due to accruing interest, and argued the second quitclaim deed was also void for violating RCW 63.29.350. The court concluded that Ten Bridges had no right to redeem the property because the second quitclaim deed was also void for violating RCW 63.29.350.

Ten Bridges appeals both orders voiding the quitclaim deeds.

[2] Clerk's Papers (CP) at 505 (No. 80456-1-I).

Teresia Guandai

Guandai's condominium was sold to Midas Mulligan for $116,000 at public auction. Guandai's condominium owners association had filed for and successfully foreclosed on a lien for unpaid assessments. By the time of the sale, Guandai owed almost $27,000. After paying off the lien and other expenses, the sheriff deposited just under $90,000 in surplus proceeds with the King County Superior Court clerk's office.

Guandai had one year to redeem. Matt Cox of Ten Bridges soon called Guandai and told her she "might" be able to receive the surplus funds, but it would be "nearly impossible."[3] Guandai had not known about the funds before his call. Cox called repeatedly, offering $15,000 for her remaining interest in her home and her right to claim the surplus proceeds. When the year was almost over, Guandai faced losing her home and needed money. She spoke with Cox again and agreed to sell. Guandai signed a quitclaim deed transferring her interest in the condo, including any right to surplus proceeds from its sale, to Ten Bridges. Ten Bridges wired her $15,000.

A few weeks later, Ten Bridges filed a motion to have the surplus funds disbursed to it. It sent notice of its motion to Midas Mulligan and to Guandai at her now-vacant condominium. Guandai did not appear at the May 15, 2019 hearing. Midas Mulligan opposed the motion and argued either Guandai was entitled to the money or, if she did not assert a claim, then it was entitled to the

[3] CP at 271-72 (No. 80084-1-I).

surplus funds as the property owner. It requested an evidentiary hearing to determine whether Ten Bridges' agreement with Guandai violated RCW 63.29.350.

At the next hearing, Guandai appeared pro se with Midas Mulligan and Ten Bridges. The court concluded RCW 63.29.350 applied, voided Ten Bridges' agreement with Guandai, and awarded her the surplus proceeds, except for the $15,000 Ten Bridges already paid her.

Ten Bridges appeals, and Guandai cross appeals the ruling disbursing $15,000 of the surplus proceeds to Ten Bridges.

ANALYSIS

I. Standing

As a threshold matter, we address Ten Bridges' challenge to Madrona Lisa's standing to oppose its attempts to set the price of and redeem the condominium Asano used to own.

"We review de novo whether a party has standing."[4] A party "whose rights and interests are at stake" has standing to defend against an action.[5] A party has standing when it can demonstrate, first, an injury "fairly traceable to the challenged conduct and likely to be redressed by the requested relief," and,

[4] Bavand v. OneWest Bank, 196 Wn. App. 813, 834, 385 P.3d 233 (2016) (citing In re Estate of Becker, 177 Wn.2d 242, 246, 298 P.3d 720 (2013)).

[5] Riverview Cmty. Grp. v. Spencer & Livingston, 181 Wn.2d 888, 893, 337 P.3d 1076 (2014) (citing Walker v. Munro, 124 Wn.2d 402, 419, 879 P.2d 920 (1994)).

second, a cognizable interest within the "'zone of interests protected by the statute'" at issue.[6]

Ten Bridges specifically argues the second requirement is not met because it has an "unequivocal right to redeem" and Madrona Lisa has an "unequivocal right" to receive the proper redemption price from Ten Bridges.[7] Ten Bridges misunderstands Madrona Lisa's rights and its own.

The purchaser of a foreclosed property has an inchoate ownership interest in the property.[8] This interest vests once no one has the right to redeem.[9] Only a person with a valid interest in the foreclosed property, or their successor, may attempt to redeem the property.[10] If a prospective redemptioner attempts to redeem, then they take on a statutory duty to pay the purchaser the proper price, and the purchaser has a corresponding statutory right to payment.[11] Thus, Ten Bridges had a right to redeem provided it held a valid interest in the property and

[6] Bavand, 196 Wn. App. at 834 (quoting State v. Johnson, 179 Wn.2d 534, 552, 315 P.3d 1090 (2014)).

[7] Appellant's Br. at 11 (No. 80456-1).

[8] Fid. Mut. Sav. Bank v. Mark, 112 Wn.2d 47, 52-53, 767 P.2d 1382 (1989) (quoting W. T. Watts, Inc. v. Sherrer, 89 Wn.2d 245, 248, 571 P.2d 203 (1977)); Gray v. C.A. Harris & Son, 200 Wash. 181, 186, 93 P.2d 385 (1939).

[9] Performance Constr., LLC v. Glenn, 195 Wn. App. 406, 419, 380 P.3d 618 (2016) (citing RCW 6.21.120)).

[10] Fid. Mut. Sav. Bank, 112 Wn.2d at 53; RCW 6.23.010.

[11] See RCW 6.23.050 (referring to a purchaser's "right to payment" from a redemptioner); RCW 6.23.020(2) (defining the scope of a redemptioner's duty to pay); see also W.T. Watts, 89 Wn.2d at 248-49 (explaining purchaser's right to receive payment) (citing former RCW 6.24.140 (1987), recodified as RCW 6.23.020).

tendered the proper amount. Madrona Lisa had an inchoate interest in the condominium and a right to receive the proper amount of payment from Ten Bridges upon proof of a valid interest.

Ten Bridges relied on the first quitclaim deed to show its right to redeem. The posted redemption price at the time was $413,361.61. Ten Bridges disagreed with Madrona Lisa's calculation of the redemption price, challenging it by tendering $375,556.41 and requesting a court order setting the redemption price at that amount. Ten Bridges also asked the court to direct the sheriff to accept that price. Because this motion threatened Madrona Lisa's inchoate ownership interest and its right to the proper amount of payment,[12] it had standing to challenge the validity of the first quitclaim deed.

And because Ten Bridges' second motion to set the redemption price asked the court to set the price for less than the amount declared by Madrona Lisa and relied upon the second quitclaim deed for proof of its right to redeem, Madrona Lisa had standing to challenge the validity of the second deed.[13]

[12] The trial court never decided whether Madrona Lisa declared the correct redemption price, and that question is not before us.

[13] Ten Bridges argues Asano, as the grantor, is estopped from challenging the validity of the second deed. For the reasons explained below, the second quitclaim deed was illegal. Because it was illegal, Ten Bridges may not invoke the doctrine of estoppel to bar Asano's challenge. See Cooper v. Baer, 59 Wn.2d 763, 763, 370 P.2d 871 (1962) (illegal contracts may not be enforced by estoppel) (citing State v. Nw. Magnesite Co., 28 Wn.2d 1, 26, 182 P.2d 643 (1947)).

II. The Quitclaim Deeds Signed by Asano and Guandai Violated RCW 63.29.350

The quitclaim deeds signed by Asano and Guandai were each found to be void for violating RCW 63.29.350. Ten Bridges argues the statute does not apply. We review questions of statutory interpretation de novo.[14] We construe a statute to determine and implement the legislature's intent based on the statute's plain meaning.[15] We can use a dictionary to determine the plain meaning of a term left undefined by the statute or by its context.[16] We apply the rules of statutory construction only if a statute is ambiguous.[17]

In relevant part, RCW 63.29.350(1) provides:

> It is unlawful for any person to seek or receive from any person or contract with any person for any fee or compensation for locating or purporting to locate any . . . funds held by a county that are proceeds from a foreclosure for delinquent property taxes, assessments, or other liens . . . in excess of five percent of the value thereof returned to such owner.

A statutory violation is both a criminal misdemeanor and a deceptive practice under chapter 19.86 RCW, the Consumer Protection Act (CPA).[18]

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[14] TracFone Wireless, Inc. v. Washington Dep't of Revenue, 170 Wn.2d 273, 281, 242 P.3d 810 (2010) (citing Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010))

[15] Id. at 273 (citing Lake, 169 Wn.2d at 526; Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)).

[16] Samish Indian Nation v. Dep't of Licensing, ___ Wn. App. 2d ___, 471 P.3d 261, 264 (2020) (quoting Matter of Detention of J.N., 200 Wn. App. 279, 286, 402 P.3d 380 (2017)).

[17] Berger v. Sonneland, 144 Wn.2d 91, 105, 26 P.3d 257 (2001) (citing Davis v. Dep't of Licensing, 137 Wn.2d 957, 963, 977 P.2d 554 (1999)).

[18] RCW 63.29.350.

Ten Bridges argues three reasons why both trial courts misconstrued RCW 63.29.350 to void its transactions with Asano and Guandai. It contends, first, the statute applies only to surplus proceeds from foreclosures of government-held liens; second, the statute applies only to proceeds held by a county, and superior court clerks are not county officers; and, third, it did not contract with Asano or Guandai to locate funds.

Other liens. Ten Bridges contends surplus proceeds from the judicial foreclosure of both condominiums were not from "property taxes, assessments, or other liens" as contemplated by RCW 63.29.350 because the statute's terms and structure suggest the legislature was referring only to "'other liens' that are held by governmental . . . entities."[19]

The statute's plain language does not support Ten Bridges. "Property taxes," "assessments," and "liens" have distinct meanings. For example, a tax must be imposed by government, while a "lien" is a "charge upon real or personal property for the satisfaction of some debt or duty ordinarily arising by operation of law."[20] Liens can be imposed by a public or private entity, including a condominium homeowners association. Ten Bridges' restrictive interpretation does not accord with the meaning of "lien."

[19] Appellant's Br. at 20-21 (No. 80456-1-I).

[20] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1306, 2345 (3rd ed. 2002); see Samish, 471 P.3d at 264 (court may use a dictionary when statutory terms are undefined) (quoting Det. of J.N., 200 Wn. App. at 286).

The structure of the clause does not support Ten Bridges' interpretation either. It fails to provide any applicable authority or rule of interpretation that the first noun in a series, such as "property taxes," limits or modifies the meaning of other distinct nouns in that series, such as "other liens." The plain meaning of "other liens" includes any lien that has been foreclosed upon.

Funds held by a county. Ten Bridges also argues the statute is inapplicable because funds "held by a county" are distinct from funds held by a superior court clerk.[21] It asserts the critical role of courts in disbursing surplus funds places superior court clerks solely within courts, separate from counties. Understanding the office of superior court clerk and the role it plays in receiving, holding, and disbursing excess funds from a judicial foreclosure shows why Ten Bridges' interpretation is incorrect.[22]

Article IV, section 26 of the Washington Constitution provides that each "county clerk shall be by virtue of his office, clerk of the superior court." In the majority of Washington's counties, superior court clerks are elected and serve roles within the judiciary and within county government.[23] Elected clerks fulfill "a

[21] Appellant's Br. at 18 (No. 80456-1-I).

[22] None of the statutes and rules Ten Bridges cites support its position because it focuses on an irrelevant portion of the statute or rule or because they are not related to a superior court clerk's role in foreclosures. Ten Bridges' reliance on a foreign case, Dowling v. Stapley, 218 Ariz. 80, 179 P.3d 960 (Ariz. Ct. App. 2008), is also misplaced because it has nothing to do with superior court clerks and addresses the meaning of "county" in an Arizona education statute.

[23] Burrowes v. Killian, 195 Wn.2d 350, 358, 459 P.3d 1082 (2020) (citing WASH. CONST. art. IV, § 26; art. XI, § 5).

constitutional position that exists outside the judicial branch."[24] The office of superior court clerk is "essentially ministerial in its nature, and the clerk is neither the court nor a judicial officer."[25]

In King County, the county at-issue here, the superior court clerk is not elected but remains part of the county. The King County Charter provides for a Department of Judicial Administration within the office of the county executive and explains the superior court clerk administers it.[26] The Department of Judicial Administration is responsible for the superior court as part of the county's government and performs duties set by the county's superior court judges and by statute.[27]

The statutes governing judicial foreclosure of a homeowners association's lien for unpaid assessments also show superior court clerks act in ministerial roles outside the court system when managing surplus funds. A homeowners association can enforce its lien judicially under chapter 61.12 RCW.[28] RCW 6.21.100 provides that the sheriff who conducted the foreclosure auction "shall return the money" and related documents to the clerk of the superior court issuing the execution order, and RCW 6.21.110(1) requires the superior court

[24] Id. at 361 (citing Wash. Const. art. XI, § 5).

[25] Swanson v. Olympic Peninsula Motor Coach Co., 190 Wash. 35, 38, 66 P.2d 842 (1937).

[26] KING COUNTY CHARTER art. 3, § 350.20.20.

[27] Id.; Burrowes, 195 Wn.2d at 358-59 (citing In re Recall of Riddle, 189 Wn.2d 565, 583, 403 P.3d 849 (2017)).

[28] RCW 64.34.364(2), (9).

clerk to use the auction proceeds "returned by the sheriff" to satisfy the judgment and pay "any excess proceeds" in accordance with a court order. And although the clerk may disburse excess proceeds only after a court orders them to,[29] this is no different from other ministerial acts by a county employee acting on a court's order. These statutes establish superior court clerks are fulfilling their ministerial, nonjudicial, statutory duties as county employees managing the court system when handling proceeds from judicial foreclosures.[30]

Locate or purport to locate. RCW 63.29.350 does not define "purport" or "locate." The dictionary defines "purport" as "to convey, imply, or profess outwardly."[31] To "locate" is "to seek out and discover the position of."[32] Ten Bridges contends it did not locate funds for Asano or Guandai for a fee or compensation because it discovered the funds' positions before contracting with them and even disclosed the positions for free. But this argument relies on a narrow, superficial interpretation of the statute. The prohibition in RCW 63.29.350 is not on contracting for locating or purporting to locate surplus funds. The statute caps a fund-finder's potential compensation for locating surplus funds.[33] To protect consumers, the legislature prohibited fund-finders

[29] RCW 6.21.110(5)(b).

[30] See Burrowes, 195 Wn.2d at 360-63 (explaining a county clerk was not fulfilling an "in-court duty" when managing court records because her record-keeping duties were set by statute and could not be altered by court rule).

[31] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1847.

[32] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1327.

[33] RCW 63.29.350(1).

from using their knowledge of the location of surplus funds held by a county following foreclosure to enrich themselves at the expense of the individuals entitled to claim the funds.

To determine whether Ten Bridges' agreements with Asano and Guandai violate the statute, we must evaluate how and why Ten Bridges was compensated by examining the substance and not the form of the agreements.[34] Ten Bridges argues it conducted mere real estate transactions, so RCW 63.29.350 does not apply. When deciding whether a law applies to a contract, we are "guided by the substance or effect of the transaction rather than the particular form or label adopted."[35] This court has explained the contracting parties' "intention[s] cannot be ascertained from . . . the name given to the instrument or to the legal relationship created, whether it be 'deed', 'contract', 'lease', or other relationship" because the substance of the agreement should determine the parties' intentions.[36] Thus, regardless of their form, Ten Bridges'

[34] Ten Bridges cites Nelson v. McGoldrick, 127 Wn.2d 124, 896 P.2d 1258 (1995), and International Tracers of America v. Hard, 89 Wn.2d 140, 570 P.2d 131 (1977), to argue RCW 63.29.350 applies only to contingent fee agreements. Neither case is apt because both interpret an earlier version of RCW 63.29.350 that did not include the language at-issue here.

[35] In re Smiley's Estate, 35 Wn.2d 863, 866, 216 P.2d 212 (1950); see generally Port of Longview, Cowlitz County v. Taxpayers of Port of Longview, Cowlitz County, 85 Wn.2d 216, 527 P.2d 263 (1974) (examining the substance and results of two putative leasing agreements between public ports and private industry to determine whether the contracts violated article 8, section 7 of the state constitution).

[36] In re Estate of Verbeek, 2 Wn. App. 144, 149, 467 P.2d 178 (1970); see Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 504, 115 P.3d 262

transactions with Guandai and Asano violated RCW 63.29.350 and were void if Ten Bridges sought more than five percent of the value of the funds as compensation for locating or purporting to locate the surplus funds. Assuming that Ten Bridges disclosed the funds' locations for free, the statute still applies if Ten Bridges used its knowledge from having located the funds as part of a scheme to compensate itself with more than five percent of the value of the funds.

A. Asano

In May 2019, Asano signed the first quitclaim deed assigning to Ten Bridges her interest in her condominium "together with any and all other tangible or intangible rights and funds concerning or relating to the Property, to include any interests conferred by . . . RCW 6.21 et seq., or RCW 61.12 et seq., or other applicable law."[37] Chapter 6.21 RCW and chapter 61.12 RCW provide for a judgment debtor's right to receive surplus proceeds from a foreclosure.[38] In exchange, Ten Bridges provided "$0 (Zero Dollars plus other valuable consideration)."[39] The "other valuable consideration" was Ten Bridges' promise to file a motion to obtain the $342,117.51 in surplus proceeds from the sheriff's

(2005) ("[T]he subjective intent of the parties is generally irrelevant if the intent can be determined from the actual words used.").

[37] CP at 97 (No. 80456-1-I).

[38] See RCW 6.21.110(5)(a) ("Any remaining proceeds [from a judicial foreclosure] shall be paid to the judgment debtor."); RCW 61.12.150 ("Any remaining surplus [from a mortgage foreclosure] shall be paid to the mortgage debtor, his or her heirs and assigns.").

[39] CP at 97 (No. 80456-1-I).

sale and then give Asano $172,000 of it. Ten Bridges would receive compensation worth almost 50 percent of the value of the funds returned, far above the statutory cap of five percent.

Ten Bridges reads the statute as applying when a party contracts only to locate surplus funds.[40] It contends its transaction with Asano was lawful because it located the surplus funds before agreeing to connect her with them. But this reading of RCW 63.29.350 is not persuasive because it requires inserting "only" before the phrase "locating or purporting to locate."[41] In substance, Ten Bridges relied upon having located the surplus funds for a fee of almost 50 percent of the funds as compensation for obtaining the other 50 percent for Asano. The statute's purpose would be undermined if Ten Bridges could evade regulation by tying the service of locating the funds with obtaining the funds or by locating the funds before seeking compensation for having done so. Because Ten Bridges combined the services of locating surplus funds held by King County and of connecting Asano with her surplus funds, both in exchange for more than five percent of the returned funds' value, the first quitclaim deed violated

[40] See Appellant's Br. at 16 (No. 80456-1-I) ("In short, RCW 63.29.350 only applies to contracts that charge a fee for 'locating or purporting to locate' certain property.").

[41] See Millay v. Cam, 135 Wn.2d 193, 203, 955 P.2d 791 (1998) ("This court refrains from adding to, or subtracting from, the language of a statute unless imperatively required to make it rational.") (citing Applied Indus. Materials Corp. v. Melton, 74 Wn. App. 73, 79, 872 P.2d 87 (1994)).

RCW 63.29.350 and was void.[42]

Ten Bridges contends the court erred by concluding the second quitclaim deed was also invalid because it did not promise to obtain surplus proceeds for Asano in the second deed. Using the second deed, Asano transferred her interest in her condominium to Ten Bridges "in consideration of $0 (Zero Dollars plus other valuable consideration)."[43] Unlike the first deed, the second deed recites no other consideration in exchange for the rights and interests assigned. But when Cox proposed the second deed to Asano, he explained it "changes nothing about the agreement that you already signed," would have "no effect whatsoever on our existing agreement," and would still entitle her to $172,000.[44] Because the first quitclaim deed violated RCW 63.29.350 and the parties intended that the second deed "change[ ] nothing" from the first,[45] the second

[42] Asano urges affirmance on alternate grounds, arguing the quitclaim deeds were unconscionable. Because we affirm the trial court's reasoning and nothing in the record suggests Asano or Madrona Lisa raised the doctrine of unconscionability as grounds to void to transaction before the trial court, we need not consider them.

[43] CP at 534 (No. 80456-1-I).

[44] CP at 468, 504-05 (No. 80456-1-I).

[45] See Pelly v. Panasyuk, 2 Wn. App. 2d 848, 866, 413 P.3d 629 (2018) (extrinsic evidence surrounding creation of a real estate contract can show parties' objective intent) (citing Hollis v. Garwall, Inc., 137 Wn.2d 683, 695-97, 974 P.2d 836 (1999)).

quitclaim deed was also void for violating RCW 63.29.350.[46]

B. Guandai

Ten Bridges sought to contract with Guandai because it had located surplus funds from the foreclosure on her condominium.[47] Ten Bridges offered $15,000 to Guandai in return for her remaining interest in her condominium "together with any and all other tangible or intangible rights and funds concerning or relating to the Property, to include any interests conferred by . . . RCW 6.21 et seq., or RCW 61.12 et seq., or other applicable law."[48] Chapter 6.21 RCW and chapter 61.12 RCW provide for a judgment debtor's right to receive all surplus proceeds from a foreclosure.[49] The quitclaim deed acknowledged the court clerk held approximately $90,000 in surplus funds, which Ten Bridges knew only because it had located them.

[46] The parties debate the applicability of the doctrine of severability, but severability does not apply where the transaction is illegal. See Brougham v. Swarva, 34 Wn. App. 68, 80, 661 P.2d 138 (1983) (doctrine applies when "'the promise sued upon is related to an illegal transaction, but is not illegal in and of itself'") (quoting Sherwood and Roberts-Yakima, Inc. v. Cohan, 2 Wn. App. 703, 710, 469 P.2d 574 (1970)).

[47] See CP at 260 (No. 80084-1-I) (Ten Bridges first contacted Guandai after the sheriff's sale); Appellant's Reply to Amicus Nw. Just. Project, et al., at 1 (No. 80084-1-I) (Ten Bridges describing its business as finding individuals who could claim surplus funds from a property foreclosure).

[48] CP at 164 (No. 80084-1-I).

[49] RCW 6.21.110(5)(a) ("Any remaining proceeds [from a judicial foreclosure] shall be paid to the judgment debtor."); RCW 61.12.150 ("Any remaining surplus [from a mortgage foreclosure] shall be paid to the mortgage debtor, his or her heirs and assigns.").

The form of the transaction—a quitclaim deed transferring Guandai's right to surplus funds for $15,000 in cash—may not appear to be a fee or compensation for locating the disclosed surplus proceeds. But here, Ten Bridges based its compensation on Guandai's assignment of her right to the surplus funds, so the substance of the transaction inherently includes compensation for having located the funds. Ten Bridges sought to gain almost 83 percent of the value of the surplus funds by offering Guandai the equivalent of 17 percent of those funds. This is, in substance, an agreement to a fee for having located and obtained surplus funds that far exceeds the statutory five percent limit. Even if there is some risk to Ten Bridges that a third party may contest its claim to the surplus funds, the substance of the agreement is a form of equity stripping barred by the statute. As explained, the statute's purpose would be undermined by limiting its applicability narrowly to offers only to "locate funds." Because Ten Bridges sought more than five percent of the value of the surplus funds as a fee for, in substance, locating and obtaining those funds, the quitclaim deed violated RCW 63.29.350 and was void.[50]

[50] Ten Bridges contends the trial court erroneously concluded the quitclaim deed was void because it was unconscionable or obtained through duress. The record shows otherwise. The trial court explicitly ruled against Ten Bridges solely because its agreement with Guandai violated RCW 63.29.350. See Report of Proceedings (RP) (May 31, 2019) at 59-60 (No. 800841-I); CP at 304-05 (No. 80084-1-I). Although it explained Ten Bridges' approach to negotiating with Guandai was "a form of economic duress" and the facts of the case struck the court as "an unconscionable exchange," RP (May 31, 2019) at 57 (No. 80084-1-I), that fleeting condemnation of Ten Bridges' business practices was not the basis for its decision. Ten Bridges fails to identify a reviewable error.

III. Guandai's Surplus Funds

After voiding Guandai's quitclaim deed, the trial court ordered the superior court clerk to disburse $15,000 of the surplus funds to Ten Bridges and the remainder to Guandai. Ten Bridges argues Guandai was not entitled to the funds because she never made a formal motion requesting them, depriving it of the opportunity to respond. Anyone seeking disbursement of surplus funds from a foreclosure sale must file a motion and serve notice of that motion on "all persons who had an interest in the property at the time of sale, and any other party who has entered an appearance in the proceeding."[51] The question is whether the statute was satisfied despite the absence of a formal motion.

By May 8, 2019, both Ten Bridges and Midas Mulligan had moved for disbursement of the surplus funds. At the first hearing on the funds one week later, Midas Mulligan's counsel argued, "If Miss Guandai was here, I'd say she's entitled to it."[52] The court declined to order disbursement at that hearing because "the money potentially belongs to the former owner of the property."[53] Ten Bridges suggested holding another hearing with Guandai present, and the court agreed. Guandai appeared at the next hearing, and the court found every party with an interest at the time of sale received notice and was present. The court concluded that requiring a formal motion for another hearing would be a useless

[51] RCW 6.21.110(5)(b).

[52] RP (May 15, 2019) at 16 (No. 80084-1-I).

[53] Id. at 22.

act because Guandai was entitled to the surplus funds under RCW 6.21.110 and every party with an interest in the funds had presented their arguments.[54]

Ten Bridges does not dispute the trial court's findings about notice, and we conclude it had an adequate opportunity to present its argument that the quitclaim deed was valid. The only other interested party, Midas Mulligan, agreed Guandai is entitled to the funds. Because the absence of a formal motion from Guandai caused no prejudice and vacating this portion of the order would be a useless act wasting judicial resources, the trial court did not err by awarding the funds to Guandai.[55]

On cross appeal, Guandai contends the court erred by disbursing $15,000 to Ten Bridges as repayment.[56] We review the form of an equitable remedy

[54] Contrary to Ten Bridges' contention, it is immaterial that the trial court may have considered Guandai's presentation at the hearing as a form of testimony because the court's decision to award her the surplus fees can be affirmed entirely upon her two declarations and the rest of the record apart from her "testimony" at the hearing.

[55] See McAlmond v. City of Bremerton, 60 Wn.2d 383, 386, 374 P.2d 181 (1962) (concluding that requiring revocation and resubmittal of a petition to a city council, despite the petitioners' failure to comply with a statute, would be a useless act where the failure to comply did not deprive anyone of notice or cause prejudice, and ordering revocation would be a useless and inequitable act); Jaramillo v. Morris, 50 Wn. App. 822, 833, 750 P.2d 1301 (1988) (declining to order a new trial despite a reversible error when doing so would not change the amount of damages awarded) (citing RAP 12.2).

[56] Ten Bridges contends this matter is not properly before us because Guandai and Midas Mulligan "never argued Ten Bridges' agreement . . . was illegal and unenforceable." Appellant's Reply Br. at 22 (No. 80084-1-I). But this was the exact issue before the trial court. E.g., RP (May 31, 2019) at 34 (No. 80084-1-I) (the court discussing the effect of illegality on the quitclaim deed and how to distribute the surplus funds).

fashioned after rescission of a void contract for abuse of discretion.[57] Upon rescission, a court should attempt to return the parties to their relative positions before the contract was made.[58]

Guandai was entitled to the $89,234.72 in surplus proceeds from the sale of her condominium.[59] Ten Bridges paid her $15,000, and the trial court awarded her the difference between $89,234.72 and $15,000. Ten Bridges received $15,000. The court returned the parties to their respective positions before entering into their agreement. Guandai fails to show the court abused its discretion.

IV. Attorney Fees on Appeal

Respondents request attorney fees from this appeal under the CPA and under RAP 18.9 for answering a frivolous appeal. Neither basis is compelling. Although a violation of RCW 63.29.350 is a presumptively unfair practice under the CPA,[60] no one alleged to either trial court that Ten Bridges violated the CPA. Because a party cannot raise an entirely new claim on appeal,[61] the CPA is not a

[57] Hornback v. Wentworth, 132 Wn. App. 504, 513, 132 P.3d 778 (2006) (citing Willener v. Sweeting, 107 Wn.2d 388, 397, 730 P.2d 45 (1986)).

[58] Willener, 107 Wn.2d at 397.

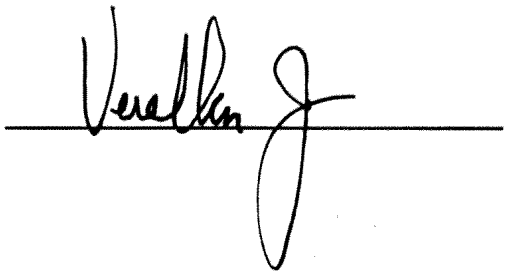
[59] See RCW 6.21.110(5)(a) ("Any remaining proceeds [from a foreclosure] shall be paid to the judgment debtor.").

[60] RCW 63.29.350(2).

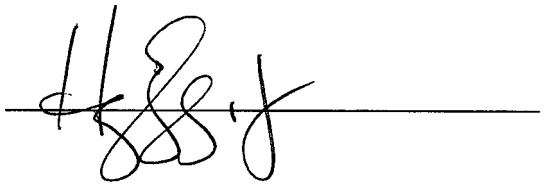
[61] RAP 2.5(a).

valid basis for an award of attorney fees. And attorney fees are not warranted under RAP 18.9 because Ten Bridges' appeals raised debatable issues.[62]

Therefore, we affirm.



WE CONCUR:



[62] See Cox v. Kroger Co., 2 Wn. App. 2d 395, 410, 409 P.3d 1191 (2018) ("'An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and that the appeal is so devoid of merit that there is no possibility of reversal.'") (quoting Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd., 170 Wn.2d 577, 580, 245 P.3d 764 (2010)).

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

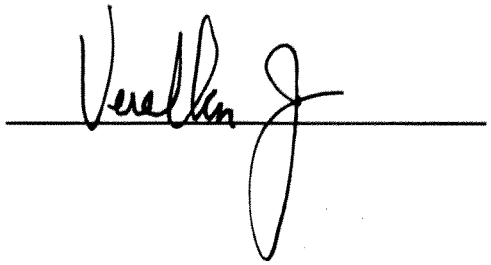
TEN BRIDGES, LLC, CARYLYLE CONDOMINIUM OWNERS ASSOCIATION, Appellant/Cross Respondent, v. YUKIKO ASANO, Respondent/Cross Appellant,	)	No. 80456-1-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant filed a motion for reconsideration of the opinion filed October 26, 2020. The panel requested and received an answer from respondent. After consideration of the motion and answer, the panel has determined the motion should be denied.

Now, therefore, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

FOR THE PANEL:



EISENHOWER CARLSON PLLC

February 01, 2021 - 2:08 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Carlyle Condominium Owners Association et al, Appellants v. Yukiko Asano et al, Respondents (804561)

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